



# California Fair Political Practices Commission

July 14, 1989

Honorable David Roberti  
President Pro Tempore  
State Capitol  
Sacramento, CA 95814

Re: Your Request for Advice  
Our File No. A-89-358

Dear Senator Roberti:

This is in response to your request for advice concerning the application of the contribution limits of the Political Reform Act (the "Act")<sup>1/</sup> to recall elections. On July 12, 1989, I telephoned a member of your staff who agreed that, due to recent activities concerning the issue of recall elections,<sup>2/</sup> our response could be mailed on July 14, 1989.

## QUESTION

Are contributions received by an elected officeholder for the purpose of defending a recall effort subject to the contribution limits of the Act?

---

<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are made to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2/</sup> On May 22, 1989, the Office of Administrative Law (OAL) disapproved amendments to Regulation 18536.2, which permitted candidates and committees to use pre-1989 contributions in recall elections. Though this regulation does not directly affect the question presented herein, OAL's underlying reason for disapproving the amendments to Regulation 18536.2 was that, in its opinion, recall elections were elections to office and not ballot measures. The Governor's Office affirmed OAL's disapproval on July 10, 1989. The Commission is considering its options in responding to the disapproval. Until otherwise instructed by the Commission, staff will continue to advise on the ground that recall elections are ballot measures and not elections to office. However, this advice is subject to change.

### CONCLUSION

Contributions received by an elected officeholder for the purpose of defending a recall effort are subject to the contribution limits of the Act until the officeholder is served with the notice of intention to circulate a recall petition and the recall notice is filed and published or posted according to law. Thereafter, the contributions to oppose the recall effort are not subject to the contribution limits of the Act. However, those contributions may not be used for purposes other than the recall effort and must be kept separate from other contributions to the elected officeholder.

### DISCUSSION

The Act prohibits candidates from receiving contributions in excess of specific limits during a fiscal year. (See Sections 85301, 85303 and 85305.) Furthermore, Section 82007 classifies an officeholder who is subject to a recall election as a "candidate." Thus, it could be concluded that, since officeholders subject to recall are "candidates," contributions they receive in defending a recall effort are subject to the Act's contribution limits.

However, Section 82043 defines a "measure" as:

[A]ny constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body, or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedure whether or not it qualifies for the ballot.

(Emphasis added.)

Therefore, under this definition, a recall is considered to be a ballot measure under the Act.<sup>3/</sup> In Citizens Against Rent Control v. City of Berkeley (1981) 454 U.S. 290, the United States Supreme Court held that contribution limits cannot be imposed in ballot measure campaigns.

Thus, if a recall is construed as an election to office under the Act, the Act's contribution limits apply. However, if a recall is instead construed as a ballot measure, the Act's contribution limits cannot apply.

---

<sup>3/</sup> The procedure for recalling an elected official also is similar to the procedure for qualifying an initiative measure for the ballot. (See Elections Code Sections 27000 et seq.)

To address this ambiguity in the Act, we apply the rules of statutory interpretation. When a statute is ambiguous and its intent unclear, the intent should be gathered from the whole act and not isolated parts or words. (Marrujo v. Hunt, (1977) 71 Cal. App. 3d 972, 977.) All the parts should be construed together and harmonized, with reconciliation of seemingly conflicting or inconsistent provisions. (Estate of McDill (1975) 14 Cal. 3d 831.) Furthermore, a statute should be construed in favor of its validity and constitutionality if its language permits. (S. v. Board of Education (1971) 20 Cal. App. 3d 83.) Thus, if a statute can be reasonably interpreted so as to avoid its conflict with the constitution, that interpretation will prevail. (Co. of Los Angeles v. Riley (1936) 6 Cal. 2d 625.)

In applying these principles, we note that Section 85300, which, like the contribution limitations, was added to the Act by Proposition 73, states:

No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office.

(Emphasis added.)

If recall elections are construed as being elections to office, Section 85300 would preclude the use of public moneys to reimburse elected officials for their campaign costs in successfully resisting recall attempts.

However, Article 2, Section 18 of the California Constitution states:

A state officer who is not recalled shall be reimbursed by the State for the officer's recall election expenses legally and personally incurred.

If recalls are classified as elections to office, this provision would render Section 85300 unconstitutional. As set forth above, if statutes can be reasonably interpreted to avoid their unconstitutionality, the courts will do so. The uncertainty created by the definitions of "candidate" and "measure" in the Act allows for a reasonable interpretation that recall elections are ballot measures. Such an interpretation harmonizes the contribution limits of the Act, Section 85300 and Article 2, Section 18 of the California Constitution and thus avoids Section 85300's unconstitutionality.

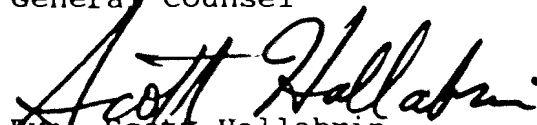
This interpretation is also consistent with the intent of the electorate when it approved Proposition 73. When enacting or amending a statute, it is assumed that the legislature (voters) knew the existing laws and intended to maintain a consistent body of rules. (Rosenthal v. Cory (1977) 69 Cal. App. 3d 950; Fuentes v. Workers' Compensation Appeals Board (1976) 16 Cal. 3d 1.) Article 2, Section 18 of the California Constitution was in existence long before Proposition 73 was placed on the ballot. Thus, it is assumed that the electorate knew of its existence at the time it voted upon and approved Proposition 73.

Therefore, recall elections must be classified as ballot measures under the Act and the Act's contribution limits do not apply to contributions raised for this purpose. You may thus raise contributions in excess of the Act's limits to defend against a recall. However, the recall process does not begin until an officeholder is served with a notice of intention to circulate a recall petition and the notice is filed and published or posted. (See Elections Code Section 27007.) Therefore, any contributions that you raise, regardless of their intended use, prior to service, filing and publication of the recall notice are subject to the limits of the Act. Finally, please note that contributions raised to defend against a recall after the recall notice procedure has been completed cannot be used to support or oppose candidates, including yourself, except in connection with the recall effort. (Section 85200, 85201, 85202 and 85304.) Accordingly, contributions received in connection with the recall effort should be held in an account separate from your campaign bank account established pursuant to Section 85202.

Should you have any questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

  
By: Scott Hallabrin  
Counsel, Legal Division

KED:SH:ld

DISTRICT ADDRESS  
3800 BARHAM BLVD., SUITE 218  
HOLLYWOOD, CA 90068  
(213) 876-5200 OR  
(818) 846-4300

SENATE COMMITTEES  
CHAIRMAN, RULES  
CHAIRMAN, SELECT COMMITTEE ON  
SMALL BUSINESS ENTERPRISES

STATE SENATOR  
**DAVID ROBERTI**  
PRESIDENT PRO TEMPORE

**California Legislature**

TWENTY-THIRD DISTRICT  
LOS ANGELES COUNTY



To DONOVAN.

J.H. LARSON

6-14-89

June 8, 1989

John H. Larson, Chair  
Frank Aparicio, Member  
George W. Fenimore, Member  
Joseph A. Rattigan, Member  
Donald Vial, Member  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, California 95814

Dear Chairman Larson and Commissioners:

I am writing to request formal written advice from the FPPC regarding whether contributions received by my campaign committee in order to defend against a possible recall are subject to the Proposition 73 contribution limits.

In addition to the March 14, 1989 Pringle advice letter (A-89-155), I note that a footnote in the material prepared for the FPPC's June 6, 1989 hearing of Assemblyman Johnson's request for an opinion on a related issue seems to confirm that recall elections are regarded as "ballot measures" and therefore, contributions in these circumstances are not subject to and do not count toward the contribution limits. While the FPPC postponed this item at its June 6th hearing, I would appreciate written advice as soon as possible.

Sincerely,

A handwritten signature in cursive script that reads "David Roberti".

DAVID ROBERTI

DR:cplnc



# California Fair Political Practices Commission

June 16, 1989

Honorable David Roberti  
California State Senate  
State Capitol  
Sacramento, CA 94248

Re: Letter No. 89-358

Dear Senator Roberti:

Your letter requesting advice under the Political Reform Act was received on June 13, 1989 by the Fair Political Practices

Commission. If you have any questions about your request, you may contact Scott Hallabrin an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan  
General Counsel

KED:plh

89-258

DISTRICT ADDRESS  
3800 BARNHAM BLVD., SUITE 218  
HOLLYWOOD, CA 90068  
(213) 876-5200 OR  
(818) 846-4300

SENATE COMMITTEES  
CHAIRMAN, RULES  
CHAIRMAN, SELECT COMMITTEE ON  
SMALL BUSINESS ENTERPRISES

STATE SENATOR  
DAVID ROBERTI  
PRESIDENT PRO TEMPORE

California Legislature

TWENTY-THIRD DISTRICT  
LOS ANGELES COUNTY



To DONOVAN.

J.H. LARSON

6-14-89

REPLY TO:  
SACRAMENTO ADDRESS  
STATE CAPITOL  
SACRAMENTO, CA 94248  
(916) 445-8390

June 8, 1989

John H. Larson, Chair  
Frank Aparicio, Member  
George W. Fenimore, Member  
Joseph A. Rattigan, Member  
Donald Vial, Member  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, California 95814

JUN 13 3 26 PM '89  
FPPC

Dear Chairman Larson and Commissioners:

I am writing to request formal written advice from the FPPC regarding whether contributions received by my campaign committee in order to defend against a possible recall are subject to the Proposition 73 contribution limits.

In addition to the March 14, 1989 Pringle advice letter (A-89-155), I note that a footnote in the material prepared for the FPPC's June 6, 1989 hearing of Assemblyman Johnson's request for an opinion on a related issue seems to confirm that recall elections are regarded as "ballot measures" and therefore, contributions in these circumstances are not subject to and do not count toward the contribution limits. While the FPPC postponed this item at its June 6th hearing, I would appreciate written advice as soon as possible.

Sincerely,

DAVID ROBERTI

.DR:cplno

TELEPHONE ADVICE

Atty: Halliburton

Date: 7/12/89

Requestor: David Roberti - State  
Senator

Tele: 916 445-3390

Question:

Talked to Roberti's Chief of Staff & notified him that, due to ~~recent~~ <sup>today's</sup> CAL/Governor's Office decision in Reg 18536.2 (Governor denied ~~FBI~~ appeal of CAL ~~Gov's~~ decision on ~~the reg~~ <sup>which said</sup> that Reg's permitting use of "instructed funds" for recall elections was inconsistent w/ Sec. 85306) we would mail out his advice letter

Advice:

on 7/14/89. He said this was OK.

Regulations: \_\_\_\_\_ Act: \_\_\_\_\_

Opinions: \_\_\_\_\_ Guide to PRA: \_\_\_\_\_

Advice Letters: \_\_\_\_\_ 84308 Pamphlet: \_\_\_\_\_

Other: \_\_\_\_\_